

## **Article 20 PERSONNEL FILES**

### **Section A. General.**

There shall be only one official personnel file maintained by the Department or at a facility for each employee. Where the official file is maintained at a facility, the Department shall have the right to maintain a copy at the central office. If dual files are kept (i.e., one at the department and one at the agency), the information concerning discipline and job performance in each file shall be identical. In no event shall an employee's medical file be contained in his/her personnel file; appropriate notations to permit cross reference to the medical file for documentation of transactions and payroll entries are permitted.

For purposes of this Article, notes kept by a supervisor shall not be considered a personnel file. Such notes shall be kept in a confidential manner and shall be considered the property of the maker of such notes, and shall not be placed in the employee's personnel file, unless the employee is provided with an exact copy of the notes. Notes concerning matters and events which involve the employee, but which matters the supervisor has not discussed with the employee, shall not be part of the personnel file.

### **Section B. Access.**

Access to and usage of individual personnel files shall be in accordance with applicable law and shall be restricted to authorized management personnel, the employee and/or the Union representative when authorized in writing by the employee. An employee shall have the right, upon request, to review his/her personnel file at reasonable intervals (generally not more frequently than two times per year), and may be accompanied by a Union Representative if he/she so desires. Upon request, the Employer shall make a copy of documents in a personnel file and furnish such copies to the employee. The Employer may charge a reasonable fee for copies previously furnished to the employee or Union, when requests for such copies become excessive. To the extent permitted by law under the Freedom of Information Act (F.O.I.A.), documents and information in the personnel file will not be released if such release would be a clearly unwarranted invasion of the employee's privacy. Prior or concurrent notice shall be given an employee when his/her personnel file is given out pursuant to F.O.I.A.

### **Section C. Employee Notification.**

A copy of any disciplinary action or material related to employee performance which is placed in the personnel file shall be provided to the employee (the employee so noting receipt, or the supervisor noting failure of the employee to

acknowledge receipt) or sent by certified mail (return receipt requested) to the employee's last address appearing on the Employer's records.

#### **Section D. Non-Job Related Information.**

Detrimental information not related to the employment relationship shall not be placed in an employee's personnel file.

#### **Section E. Time Limits.**

Except as to matters involving patient abuse or neglect, upon employee request, records of disciplinary actions/less than satisfactory service ratings issued subsequent to the execution of this Agreement shall be removed from an employee's file 24 months following the date on which the rating was issued, or the date the underlying conduct occurred or the Employer became aware of the conduct, whichever is later, provided that no new disciplinary action/less than satisfactory service rating has occurred during such 24 month period.

In the Department of Community Health, records relating to disciplinary action/less than satisfactory service for substantiated abuse or neglect of a patient shall be removed not later than 48 months following the date of the underlying conduct or the Employer became aware of the conduct, whichever is later, provided no new disciplinary action or service rating for abuse or neglect has been issued to the employee during the 48 month period. For purposes of this Section, the term "substantiated" shall mean a disciplinary action/less than satisfactory service rating not grieved, or upheld in the grievance procedure in accordance with Article 9 of this Agreement.

Counseling memoranda shall similarly be removed 12 months following the date of issuance, upon employee request at such time, provided no new counseling memorandum, or less than satisfactory service rating, has been issued during such 12 month period.

These provisions shall not prohibit the Employer from maintaining records of disciplinary action arising out of violations of prohibited practices as defined in the Civil Service Rules and Regulations. Nothing in these provisions is intended to prohibit the Employer from retaining (in a location other than in the employee's personnel file) and using records, even if "dated", as evidence in defending against claims of unlawful discrimination by the Employer, the State, its departments, agencies, officers, employees or agents.

The provisions of this Section shall apply retroactively to disciplinary actions/less than satisfactory service ratings and written reprimands/counseling memoranda initiated prior to the execution of this Agreement, to the extent that

such information cannot be used in any hearing or proceeding concerning the employee.

For purposes of computing time for expunging records under this Section, only time in pay status, Workers' Compensation, and military leave shall be counted.

The Employer may remove such documents prior to the expiration of the respective period, at the employee's request, and at the sole discretion of the Employer.